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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,982	03/17/2004	Joon-Sung Kim	8054-44 (AW8105US/JY)	3068
22150	7590	06/24/2005	EXAMINER	
F. CHAU & ASSOCIATES, LLC			SOUW, BERNARD E	
130 WOODBURY ROAD			ART UNIT	PAPER NUMBER
WOODBURY, NY 11797			2881	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/802,982	Applicant(s) KIM ET AL.	
	Examiner Bernard E. Souw	Art Unit 2881	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-20.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
All claims are held prima facie clearly anticipated and/or obvious over the cited prior art(s) for reason(s) of record.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: attachment provides a detailed discussion.

JOHN R. LEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2900

### **ADVISORY ACTION**

1. The period for reply continues to run 3 MONTHS from the date of the final rejection. Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a) accompanied by the appropriate fee. The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. A reply within the meaning of 37 CFR 1.113 or a request for a continued examination (RCE) in compliance with 37 CFR 1.114 must be timely filed to avoid abandonment of this application.

### ***Request for Reconsideration***

2. A Request for Reconsideration filed 05/05/2005 under 37 CFR 1.116 in response to the Final Office Action dated 03/22/2005, has been received.

### ***Arguments or Remarks***

3. Applicant's Arguments or Remarks filed 05/05/2005 along with the Request for Reconsideration under 37 CFR 1.116 in reply to the final rejection dated March 22, 2005, has been entered. This Office Action is made with all the suggested argument being fully considered.

4. Applicant's argument filed May 05, 2005 has been entered and considered, but is not deemed to place the application in condition for allowance. Upon the filing of an appeal and entry of the amendment, the status of the claims would be as follows:

**Rejected claim(s): 1-20**

***Response to Applicant's Arguments***

5. Applicant's arguments or remarks filed 05/05/2005 along with the Request for Reconsideration under 37 CFR 1.116 have been fully considered, but they are not persuasive.

► Regarding claims 1 and 9, Applicant's argument on pg.2 that Lischke et al. (USPAT 4,677,296) does not disclose or suggest a method or system for measuring dimensions of minute structures that includes the step of determining at least two measuring regions over the minute structures, and calculating dimensions of the minute structures corresponding to the measuring regions, is not persuasive, since Lischke's Figs. 2 and 3 clearly show 4 measuring regions, whereas Lischke's Fig.4 also shows a first measuring region K1/G1 and a second measuring region K2/G2. Lischke's method involves calculating dimensions of the minute structures, shown by the formulas  $I_2 = m \cdot G_k$  and  $L = I_2 + I_3 - I_1$  at the bottom of Fig.4.

► In contradiction to Applicant's argument on pg.3, Lischke et al. as illustrated in Fig.4 involves at least three measuring regions and calculating the length of the structures, as unambiguously represented by the formulas  $I_2 = m \cdot G_k$  and  $L = I_2 + I_3 - I_1$  at the bottom of Fig.4.

Art Unit: 2881

► Applicant's argument on pg.3 that Lischke's FIG. 4 only discloses one measuring region is thus not true. Obviously, Applicant has misinterpreted and/or misunderstood Lischke's explanation in Col.5/ll.33-63 cited by Applicant himself, since Lischke expressly recites three measuring regions in Col.5/line 39.

► Applicant's argument on pg.3 that Applicant's non-limiting example involves "*at least two measuring regions over the minute structures*" as illustrated in Applicant's FIG. 4, which allegedly depicts "*two minutes structures A and B, with movable boundaries for measuring the minute structures indicated by the dotted lines*", is unpersuasive, since the features cited by Applicant are not recited in the claims, as admitted by Applicant himself by the wording "*non-limiting examples*". Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. A reading of the specification provides no evidence to indicate that these limitations must be imported into the claims to give meaning to disputed terms. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

► Therefore, Lischke et al. does anticipate claims 1, 9 and 18, and the applied §102(b) rejections are thus proper.

► For these reasons, the rejections of the dependent claims 2-8, 10-11, 13-17 and 19-20 are also proper.

► Applicant's argument against the applied §103 rejection of claim 12 is partly also based on the two unpersuasive arguments above. The remaining part of Applicant's argument is based on Applicant's allegation that neither Lischke nor Vahala nor Wagner

Art Unit: 2881

discloses "a first electron detector for detecting primary electrons scattered from the minute structures". As already recited in the previous Office Action on page 6, lines 1-2, the use of such a detector is taught by Vahala et al. as recited in Col.2/II.1-6, or, in the alternative, by Wagner et al. in Col.4/II.35-38. Therefore, the previously applied §103 rejection of claim 12 is proper.

### **CONCLUSION**

6. For the reasons stated above, claims 1-11 and 13-20 are held *prima facie* clearly anticipated, whereas claim 12 obvious over the cited prior art(s) for reason(s) of record.

### **Communications**

45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernard E Souw whose telephone number is 571 272 2482. The examiner can normally be reached on Monday thru Friday, 9:00 am to 5:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R Lee can be reached on 571 272 2477. The central fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communications as well as for After Final communications.

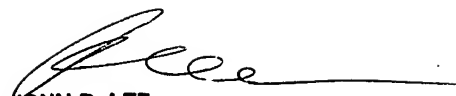
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.

Application/Control Number: 10/802,982  
Art Unit: 2881

Page 6

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June 08, 2005



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